IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Brian Jacoby et al.   Art Unit : 2143
Serial No. : 09/894,918   Examiner : Alina Boutah
Filed   : June 29, 2001   Conf. No. : 5947
Title   : DEEP PACKET SCAN HACKER IDENTIFICATION

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Applicant responds to the Examiner's Answer dated September 20, 2007 as follows

Rejection under 35 USC § 103(a)

Claims 1,3-7, 11-12, 16-17, 19-20,22-26,28,30-3 1,38-39,41-45,47,49-50,54-55,57-62,64 and 68-73 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cox (U.S.6,738,814) in view of Eichstaedt et al. (U.S. 6,662,230) and in M e r view of Maher, I11 et al.(U. S. 6,654,373), in further view of Alcendor (U. S. 6,337,899). Notwithstanding comments made in the Examiner's Answer, Appellants maintain the positions previously articulated in the Appeal Brief. However, Appellants below respond to statements in the Examiner's Answer, responsively pointing out that: (1) None of Cox, Eichstaedt, Maher and Alcendor, nor any possible combination of these references, discloses or suggests the feature of "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers," (2) the Examiner's Answer fail to establish a prima facie case.

(1) None of Cox, Eichstaedt, Maher and Alcendor, nor any possible combination of these references, discloses or suggests the feature of "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers."

The Examiner's answer relied exclusively on Alcendar to demonstrate the feature of monitoring access directed from the access providers. *See, e.g., page 12-14 of the Answer.* The Answer arrived at the this conclusion based on the observation that "there is suggestion [in

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Alcendor] that the access is monitored from the access provider itself." *See, e.g., page 14 of the Answer.* However, claim 1 recites:

> monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers to at least one of the access requestors by scanning the payload portion for at least one predetermined pattern and counting a number of data packets having payload portions that include the predetermined pattern;

As such, claim 1 not only requires monitoring the access providers; it also requires (1) monitoring data packets directed from access providers (2) at a network device, other than the access providers. Alcendor's teaches away from these two claim requirements.

More specifically, because Alcendor's access providers are doing the monitoring task on itself, Alcendor's access provider do not direct data packets to other components to do the monitoring task. Consequently, Alcendor does not (1) monitoring data packets directed from access providers.

Additionally, because Alcendor is monitoring access on the access providers itself, Alcendor is not monitoring at a network device. Because Alcendor's access providers are doing the monitoring task on itself, Alcendor's access providers has no need for a separate component, i.e., a network device, to do the monitoring task for them. Thus, Alcendor also teaches away from monitoring(2) at a network device, other than the access providers..

Therefore Alcendor teaches away from the feature of monitoring packets "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers," as recited in claim 1.

(2) The Answer fails to establish a *prima facie* case.

Based on the reasoning above, none of the cited references discloses the feature of "monitoring, at the network device, at least the payload portion of the data packets directed from at least one of the access providers,", as recited in claim 1. The Answer fails to establish a prima facie case to support all claim elements.
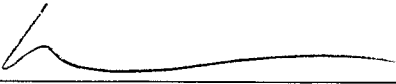
For these reasons, and the reasons stated in the Appeal Brief, Applicant submits that the final rejection should be reversed.

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Respectfully submitted,

Date: 11/20/2003

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